IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2012 OF 2004

Kalpana P. Shah & Ors. ...Petitioners.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr. J. Reis i/b. Mr. Ajit Jakhadi for the Petitioners.
Mr. Shekhar Naphade with Ms. Geeta Shastri, AGP for Respondent Nos.1, 2 and 3.
Ms. A.K. Savla for Respondent Nos.4 and 5.
Mr. H.N. Hungund for Respondent Nos.6, 7 and 8.
Mr. F. D'Vitre with Mr. Kiran Jain i/b. Kiran Jain & Co. for Respondent No.10.

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CORAM : DALVEER BHANDARI, C.J. &
DR. D.Y. CHANDRACHUD, J.

October 28, 2004.

P.C.:

The dispute in the present case arises out of the work of repairs carried out by the Maharashtra Housing and Area Development Authority to a property known as 'Parekhwadi Buildings' bearing Cadestral Survey No.1/610, Girgaon Division, V. P. Road, Mumbai-400 004. The petitioners have inter alia prayed for the

issuance of a writ of certiorari for quashing and setting aside the letter dated 7th March 2001, Exh.J to the Petition, of the Deputy Chief Engineer, bills at Exh.N and Exh.P and an order for the refund of an amount of Rs.3,50,136/- paid by the Petitioners.

Parekhwadi Buildings comprise of Building No.202-C, 202-D and 202-E having three chowks in between and two stair cases within the compound. Building 202-C and 202-D comprised of a ground and five upper storeys with 206 residential and 13 non-residential tenements and were in a dilapidated condition. A notice was issued to the owner under Section 89(1) of the Maharashtra Housing and Area Development Act, 1976 and an estimate for carrying out repairs was prepared. An Architect and Contractor were appointed for carrying out the work. The Building was repaired at a total cost of Rs.18,08,310/-. In so far as Building No.202-E is concerned, the tenants therein, being Respondent Nos.6 to 10 wrote to Respondent Nos.2 and 3 for carrying out urgent repairs thereto since the building was dilapidated. The Executive Engineer of MHADA issued a notice dated 28th February 2001 to the owner of the

building as recorded in the Register maintained by the Municipal Corporation. The owner was called upon to furnish the list of names of occupants/tenants together with his objection, if any, to the repairs that were proposed to be carried out.

In the reply filed on behalf of the Repair Board, it has been stated that the owner did not come forward with the list of tenants or with any objection to the proposed work of repair. On the basis of the information at site and on the record of Respondent No.2 and 3 and after verifying the rent receipts issued by the owner of Building No.202-E showing that the building was assessed to repair cess and upon seeing the metal cast iron plate fixed on the staircase, the building was undertaken for structural repairs. The Petitioners chose to remain silent despite a notice issued by MHADA. At the time of inspection, it was found that there were two residential tenements as a result whereof the building could not be classified as a commercial building. Tenders were invited and a work order was issued on 30th October 2002 to the lowest bidder. A total sum of Rs.5,31,509/- was expended in carrying out repairs. It is only after the repairs were

carried out and after the percentage on account of repairs as per Schedule 2 of the Act had increased that the Petitioners have now chosen to dispute the liability to pay the enhanced cess. The conduct of the Petitioners is, in our view, patently lacking in bonafides. The Petitioners stood by and waited when the work was being completed. Absolutely no objection was lodged to the notice issued by MHADA. No objection was raised until the work was carried out and completed.

That apart, we have also perused the affidavit in reply filed on behalf of one of the tenants, Respondent No.10. Respondent No.10 has stated in the affidavit in reply that his father acquired rights in respect of an establishment by the name of “Narayan Hindu Lodge” (now known as “Aradhana Lodge”) under a Deed of Assignment of 4th May 1973 from the then tenant of the said Lodge in Parekhwadi. Respondent No.10 states that his father regularly paid rent to the then landlord *including the repair cess* which was a part of the rent. The Petitioners became owners of the building in 1992-93 and it has been stated that the rent receipts issued by the Petitioners show the

recovery of repair cess as a part of the rent. Copies of the rent receipt are annexed to the affidavit in reply. In 1995, Respondent No.10 filed a declaratory suit in the Court of Small Causes against the Petitioners which was decreed on 7th September 2003. During the pendency of the suit, the monthly rent *inclusive of repair cess* was deposited in the Court of Small Causes. Petitioner No.11 filed a suit for eviction against Respondent No.10 (RAE Suit No.57/84 of 2004) in March 2004 in which an order was passed by the Court of Small Causes on 28th June 2004 permitting Respondent No.10 to deposit an amount of Rs.25,200/- being the arrears of rent *inclusive of repair cess* and permitted increases. The Plaintiff therein was directed to issue rent receipts in accordance with the judgment and order dated 7th September 2003. Respondent No.10 has also adverted to the fact that despite a notice dated 20th February 2001, the Petitioners chose not to object to the repairs which were carried out by MHADA. In the affidavit in reply, it has been stated that one of the Petitioners has a shop in the immediate vicinity of Parekhwadi and Petitioner Nos.3 to 5 are staying in a building known as “Birla Mansion” also on the V.P. Road. The repair work was carried out openly and over a period of

time without demur or objection.

Having heard Learned Counsel and having perused the affidavits which have been filed on behalf of the parties before the Court, we are of the view that no case has been made out by the Petitioners for interference under Article 226 of the Constitution. The Petitioners were clearly on notice that the building was being repaired by MHADA. The Petitioners could not have been unaware of the fact that repairs were being carried out over a period of time. Having chosen not to object, the Petitioners now cannot be heard to challenge the bill that has been raised. The conducut of the petitiones is anythting but bonafide. We find no reason to interfere. The Petition

is accordingly rejected.

CHIEF JUSTICE

DR.D. Y. CHANDRACHUD, J.